IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

WP(C).No. 14877 of 2004(U)

OS.394/1998 of PRL.MUNSIFF'S COURT,THRISSUR

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PETITIONER:

DR.JANARDHANAN,
S/O. KUNNATHULLI VELAYUDHAN, KECHERI,
THRISSUR DIST.

BY ADV. SRI.N.P.SAMUEL

RESPONDENTS:

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1. DR.CHANDRAN,
S/O. KUNNATHULLI VELAYUDHAN, ERAMANGALAM,
PONNANI TALUK, MALAPPURAM DIST.

2. SUBRAHMANIAN,
S/O. KUNNATHULLI VELAYUDHAN, KECHERI,
THRISSUR DISTRICT.

3. MURALEEDHARAN,
S/O. KUNNATHULLI VELAYUDHAN, KECHERI,
THRISSUR DIST.

4. KRISHNAN ALIAS K.V.BALAKRISHNAN,
S/O. KUNNATHULLI VELAYUDHAN, KECHERI,
THRISSUR DIST.

5. MOHANAN,
S/O. KUNNATHULLI VELAYUDHAN, KECHERI,
THRISSUR DIST.

6. AMALIKA,
D/O. KUNNATHULLI VELAYUDHAN, KECHERI,
THRISSUR DIST.

7. RAGHAVAN,
S/O. KUNNATHULLI VELAYUDHAN, KECHERI,
THRISSUR DIST.

8. PADMINI,
D/O. KUNNATHULLI VELAYUDHAN, KECHERI,
THRISSUR DIST.

9. MAHEENDRA,
S/O. KUNNATHULLI VELAYUDHAN, KECHERI,
THRISSUR DIST.

R1 BY ADV. SRI.V.GIRI
R4, R5 & R9 BY ADV. SRI.G.SREEKUMAR (CHELUR)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.14877/04

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – PHOTO COPY OF AFFIDAVIT & PETITION I.A.1815/00 IN O.S.394/98 OF MUNSIFF'S COURT, THRISSUR DT.2.3.2000 FILED BY PETR.

EXT.P2 – TRUE COPY OF AFFIDAVIT WITH PETITION I.A.4783/00 IN O.S.394/98 OF DO. FILED BY PETR. ON 31.7.2000

EXT.P3 – PHOTO COPY OF OBJECTION FILED BY R1 IN IA.4783/00 IN O.S.394/98 OF DO. DT.5.8.2000.

EXT.P4 – TRUE COPY OF ORDER IN I.A.4783/00 IN O.S.394/98 OF II ADDL. MUNSIFF, THRISSUR.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.14877 OF 2004

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DATED THIS THE 12TH JUNE, 2007

J U D G M E N T

This Writ Petition is remaining defective for want of service on respondents 3, 6 and 7. It is not necessary to await completion of service on these respondents since they sail along with the respondents who have already entered appearance before this Court.

2. In a suit for partition, the 4th respondent herein who was the 4th defendant relied on a Will allegedly executed by the father of the parties to contend that there is a bequest in his favour in respect of the suit property. The petitioner, his brother filed I.A.No.4783 of 2000 contending that the Will is not genuine and that the apparent signatures of the testator on the Will are forged, and requesting that the original of the Will be sent over to the Director of Forensic Science Laboratory, Thiruvananthapuram along with documents containing the undisputed signatures of the testator for a report after a comparison of the signatures in the Will and the undisputed signatures. The learned Munsiff by Ext.P4 order dismissed the application, taking the view that Wills are to be proved in the manner envisaged by Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act and that there is no scope whatsoever for a forensic report regarding the

genuineness of the signatures on the Will.

3. The view of the Munsiff, I am afraid, is erroneous. The position is no longer res integra. It has been held by a Division Bench of this Court in **Sumangala T.Pai v. Sundaresa Pai** (1991 (1) KLT 246), following Supreme Court decisions, that opinion of experts regarding genuineness of apparent signatures of testators on Wills can be relevant when the genuineness of Wills is under challenge.

4. Under these circumstances, I set aside Ext.P4 and direct the learned Munsiff to keep I.A.No.4783 of 2000 pending till such time as the Will in question is formally proved by the propounder, the 4th respondent by examining the attesting witnesses. Once the 4th respondent adduces whatever evidence he wants to adduce in proof of the Will, the learned Munsiff will take up I.A.No.4783 of 2000, hear the parties and pass fresh orders, keeping in mind the principles laid down by this Court in **Sumangala T.Pai's** case (1991 (1) KLT 246).

The Writ Petition is allowed as above. No costs.

(PIUS C.KURIAKOSE, JUDGE)

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